

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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 RETAIL STORE EMPLOYEES UNION, :  
 LOCAL 444, AFL-CIO, :  
 Complainant, :  
 vs. : Case I  
 : No. 20373 Ce-1668  
 HI FI SALON, INCORPORATED d/b/a : Decision No. 14556-B  
 SOUNDSTAGE, 1/ :  
 Respondent. :  
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Appearances:  
Mr. George Koleas, Business Representative, on behalf of  
 Complainant.  
Mr. Mark Pillat, Secretary, on behalf of Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Retail Store Employees Union, Local 444, AFL-CIO, herein referred to as Complainant, having on April 12, 1976, filed a complaint with the Wisconsin Employment Relations Commission wherein it alleges that Hi Fi Salon, Incorporated d/b/a Soundstage, herein referred to as Respondent, has committed unfair labor practices within the meaning of Section 111.06 of the Wisconsin Employment Peace Act;<sup>2/</sup> and the Commission having appointed Stanley H. Michelstetter II, a member of its staff, to act as Examiner and to make and issue findings of fact, conclusions of law and orders as provided in Section 111.07 (5); and pursuant to notice, hearing on said complaint having been held at Milwaukee, Wisconsin, on May 18, 1976, before the examiner; and the examiner by order dated August 31, 1976, having re-opened the hearing for the admission of additional evidence; and the examiner having considered the evidence and arguments of the parties and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

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<sup>1/</sup> Complainant amended its complaint during the course of hearing to allege Respondent's correct name.

<sup>2/</sup> All citations are to the Wisconsin Employment Peace Act, Wis. Rev. Stat., Ch. 111, Subch. I, unless otherwise noted.

## FINDINGS OF FACT

1. That Complainant is a labor organization with main offices located at 4850 West Fond du Lac Avenue, Milwaukee, Wisconsin, and that at all times it employed George Koleas and John Maglio as its agents.

2. That Respondent is an employer within the meaning of the Wisconsin Employment Peace Act over which the National Labor Relations Board acting under the Labor Management Relations Act, as amended would not assert jurisdiction pursuant to its self-imposed jurisdictional standards; that Respondent is in the audio equipment retail sales business and in that regard at all relevant times has had two stores, one in West Allis, Wisconsin (herein West Allis store), and the other in Glendale, Wisconsin (herein Bayshore store); that Mark Pillat and David Roffers each own half of the outstanding shares of Respondent and are both active in the management thereof and are frequently present at both locations; that immediately prior to December 27, 1975, Respondent employed ten non-supervisory salespersons including Voith and Stackpole, and excluding one full-time repairman, two supervisory store managers, Keats (Bayshore) and Jones (West Allis); that as of May 18, 1976, Respondent employed two full-time and six part-time salespersons, one full-time repairman and one supervisory staff manager.

3. That Voith had the highest sales record of all Respondent's employes in the year 1974; that Respondent's total sales declined for the year 1975 which decline Respondent attributed to market conditions, lack of inventory and other reasons, all of which it did not identify with any employe individually.

4. That prior to the end of October 1975, Stackpole had been the manager of the Bayshore store; that at the end of October 1975, Respondent informed Stackpole he would no longer be manager of the Bayshore store and that accordingly his salary would be reduced from \$650.00 to \$600.00 per month; that the following day Stackpole threatened to quit if his salary were reduced; that in response thereto Respondent, continued his salary at \$650.00 per month, even though it made Keats manager of the Bayshore store; that all relevant times thereafter Keats was the manager of the Bayshore store.

5. That in October 1975, Voith, who was then responsible therefor, opened the Bayshore store one and one-half hours later than he was supposed to have; that at no time did Respondent ever take any disciplinary action on the account thereof.

6. That during approximately November 1975, Voith and Roffers had a loud argument over whether Voith was entitled to sick pay; that shortly thereafter Voith told Pillat about the argument who in effect stated if he had been involved therein he would have fired Voith; that at no time did Respondent take any disciplinary action with respect thereto.

7. That on a Sunday in the middle of December 1975, Stackpole, who had responsibility therefor, opened the Bayshore store late; that prior thereto Stackpole had informed Pillat that he would not be able to open the store on that Sunday and Pillat told him to contact Voith and have him do it; that Stackpole tried, but was unable to contact Voith; that Respondent did not discipline Stackpole or Voith therefor.

8. That just prior to December 25, 1975, Voith purchased audio equipment from one of Respondent's suppliers; that Roffers knew thereof and accompanied Voith to pick up said equipment and at no time did he in any way indicate disapproval thereof; that when Voith picked up said equipment he paid therefor with an insufficiently funded personal check; that in January 1976 his bank called him and told him said check had not cleared; that in response thereto he called the supplier and told them to resubmit said check which then cleared in the normal course of business; that at no time did Respondent ever take disciplinary action on the account thereof.

9. That in late November or early December 1975, but prior to December 17, 1975, Stackpole suggested to Voith that Respondent's employees should organize and affiliate with Complainant for the purposes of collective bargaining; that at all times thereto Voith and Stackpole actively advocated such action to fellow employees.

10. That pursuant to conversations both Stackpole and Voith had with fellow employees a meeting was held at Stackpole's apartment-residence, attended by Voith, Stackpole, Keats, Jones and at least five additional employees, during which the advisability of organizing with Complainant was the primary topic of discussion and during which the participants reached a consensus that further information should be sought as to Complainant's dues structure and methods of operation.

11. That as a result thereof, Stackpole contacted Complainant and arranged for the meeting specified in Finding of Fact 12, below; that Stackpole personally invited all of his fellow employees except

one at the Bayshore store and several of the employes at the West Allis store as well as Jones and Keats to attend same at his apartment; that at all relevant times after December 17, 1975, employes openly discussed the possibility of organizing during and after working hours in both stores; that until December 23, 1975, both managers freely participated in some of said discussions.

12. That after working hours on December 22, 1975, Koleas, Stackpole, Voith, Jones and other employes of Respondent met at Stackpole's apartment during which Complainant's representatives discussed the process and advantages of organizing, answered questions about Complainant's dues structure and circulated cards authorizing it to represent the signer for the purposes of collective bargaining; that at or about the same time representatives of Complainant and Jones concluded he was a supervisor and therefore ineligible to participate; that Jones thereafter left said meeting; that five non-supervisory sales employes of Respondent executed said cards at or about said time; that said meeting ended shortly after Jones left; that at no time have any other of Respondent's employes ever authorized Complainant to represent them for the purposes of collective bargaining; that thereafter, but prior to the close of business on December 24, 1975, Respondent and specifically Pillat learned from Jones or Keats, and at least one employe that Complainant was seeking to organize Respondent, Stackpole had held the meetings referred to above in his apartment, Respondent currently charged seven dollars a month dues; and Stackpole and Voith had both solicited employes to select Complainant as their representative for the purpose of collective bargaining.

13. That on December 23, 1975, Pillat, Roffers and Jones went to Chicago on business and first returned on that date to either store near the close of business for that date; that the following day, Christmas eve, was a very active business day; that at the close of business Pillat and Roffers met with Voith, an hourly paid employe, and gave him a new schedule reducing the total number of hours he was scheduled to work, rescheduling the times of day and days of week therefor to periods known by Respondent to be times and days which Voith least wanted to work; that the effect thereof would have been to greatly reduce Voith's income; that Respondent's sole purpose therefor was to induce Voith to quit his employment.

14. That on December 25, 1975, Respondent's place of business was closed; that on December 26, 1975, at the close of business,

Respondent informed Stackpole, a theretofore salaried employe, that he would henceforth be paid on an hourly basis and presented him with a new schedule reducing the total number of hours he was scheduled to work, rescheduling the times of day and days of week therefore to periods known by Respondent to be times and days Stackpole least wanted to work; that the effect thereof would have been to greatly reduce Stackpole's income; that Respondent's sole purpose therefor was to induce Stackpole to quit his employment.

15. That after neither Voith or Stackpole quit his employment, Respondent on December 27, 1975, verbally informed each in effect that he was discharged; that shortly thereafter both individuals contacted Keats who informed each that he had seen drafts of letters of discharge for both circulated by Pillat and Roffers during the day of December 27, 1975; that Respondent's sole reason for discharging both Voith and Stackpole was to discourage their and other employes' membership in, and activity on behalf of Complainant to establish it as the exclusive collective bargaining representative of certain of Respondent's employes.

16. That on or after December 28, 1975, Stackpole and Voith each received a letter from Respondent both of which stated in part:

"Sales at the Bayshore Sound Stage (sic) have fallen off considerably during this last year, and likewise profits have fallen off dramatically. Hi Fi Salon, Inc. management feels that due to this situation it is time for drastic changes in the way things have been done in the company. These changes we are hoping will save Hi Fi Salon, Inc. from financial ruin in the future.

Hi Fi Salon, Inc., can no longer financially tolerate the poor sales record you have had during the last year. We feel you are not applying yourself to the responsibilities that exist for every sales person in the organization (sic). This coupled with the list of improper work habits listed below are the reasons we are terminating your employment with Hi Fi Salon, Inc."

That following the above-quoted material the Stackpole letter listed stated grounds including Stackpole's failure to open the Bayshore store on a Sunday in December and having been two hours late on one occasion; that following the above-quoted material in the Voith letter there were enumerated four items which provided in substance that Voith had been discharged for constant tardiness, constantly reporting late from lunch breaks, failure to get authorization for employe purchases, and buying directly from Respondent's suppliers.

17. That on December 30, 1975, Voith had a conversation with Pillat in which Voith asked if Pillat had known about the organizational drive and Pillat at first denied that he had known; later in the same conversation Pillat stated in effect that Voith and/or other employes would be wasting seven dollars a month in union dues; that he had been a member of Complainant and that if a person were a member of a union, he could do as much as he liked and never be fired for it and Pillat thereupon stated you couldn't let management know about a thing like that; that Voith immediately asked if Pillat had heard about it and further asked if Jones had told Pillat about Complainant; that Pillat denied that Jones had told him, but stated that he had heard about said organizational drive from two parties, one of whom was in management; that by this conduct in the foregoing discussion Pillat intended to, and did imply, to Voith that the instant discharge had been motivated by his activities on behalf of Complainant.

18. That during January 1976, in the course of a management discussion concerning evaluating a new salesman who Respondent hired after the instant discharge, Pillat stated in effect that Voith had been the best salesman Respondent had ever had.

On the basis of the above and foregoing Findings of Fact, the examiner makes and files the following

#### CONCLUSIONS OF LAW

1. That Respondent, Hi Fi Salon, Incorporated d/b/a Soundstage, is an employer within the meaning of the Wisconsin Employment Peace Act over which the National Labor Relations Board, acting under the Labor Management Relations Act, as amended would not exercise jurisdiction pursuant to its self-imposed jurisdictional standards.

2. That Respondent by having discharged its employes John Voith and John Stackpole solely on the basis of their concerted activity on behalf of Complainant has committed, and is committing an unfair labor practice within the meaning of Section 111.06 (1)(c).

3. That Respondent by having discharged its employes John Voith and John Stackpole solely on the basis of their concerted activity on behalf of Complainant has, and is interfering with, coercing and restraining its employes in the exercise of their rights under Section 111.04 of the Wisconsin Employment Peace Act and thereby has, and is, committing an unfair labor practice within the meaning of Section 111.06 (1) (a) thereof.

On the basis of the above and foregoing Findings of Fact and Conclusions of Law, the examiner makes and files the following

ORDER

IT IS ORDERED that Respondent Hi Fi Salon, Incorporated d/b/a Soundstage, its officers, agents, and stockholders shall immediately:

1. Cease and Desist from:
  - (a) Discouraging membership and activity of employes in and on behalf of Complainant Retail Store Employees Union, Local 444, AFL-CIO, or any other labor organization, by discharging or otherwise discriminating against any of its employes in regard to hiring, tenure or employment, or in regard to any term or condition of employment.
  - (b) In any other manner interfering with, restraining or coercing its employes in the exercise of their rights guaranteed by the Wisconsin Employment Peace Act.
2. Take the following affirmative action which the examiner has determined will effectuate the policies of the Wisconsin Employment Peace Act.
  - (a) Immediately offer John Stackpole and John Voith reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges which they may enjoy and makes each whole by paying both a sum of money equal to that which he would have earned including all benefits, but for their terminations, less any amount of money that they earned or received which they would not have earned or received had they not been discharged.
  - (b) Notify all employes by posting copies of the notice attached hereto, marked as "Appendix A", in conspicuous locations in each of its stores. The notice shall be signed by Mark Pillat and David Roffers on behalf of Respondent, shall be posted immediately upon receipt of a copy of this Order, and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced or covered by other material.

- (c) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days of the date of this Order, as to what steps have been taken to comply herewith.

Dated at Milwaukee, Wisconsin, this 14th day of December, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II  
Stanley H. Michelstetter II  
Examiner



"APPENDIX A"

Pursuant to an Order of the Wisconsin Employment Relations Commission and in order to effectuate the policies of the Wisconsin Employment Peace Act, we hereby notify our employes that:

1. WE WILL offer to reinstate John Stackpole and John Voith to their former or substantially equivalent positions and we shall make them whole for any loss of money they may have suffered as a result of their termination.

2. WE WILL NOT discriminate against John Stackpole, John Voith or any other of our employes because of their concerted activity.

3. WE WILL NOT in any other or related manner interfere with the rights of our employes, pursuant to the provisions of the Wisconsin Employment Peace Act.

Dated this          day of                                  , 19     .

Hi Fi Salon d/b/a Soundstage

By \_\_\_\_\_  
Mark Pillat

By \_\_\_\_\_  
David Roffers

THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) DAYS FROM THE DATE ABOVE AND MUST NOT BE ALTERED, DEFACED BY ANY OTHER MATERIAL.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT  
CONCLUSIONS OF LAW AND ORDER

Complainant alleges Respondent discharged Stackpole and Voith for their part in the organizational campaign, thereby interfering with the rights of its employees and dissipating its near majority status in the unit stipulated to be appropriate.<sup>3/</sup> It seeks the usual remedy plus interest on backpay<sup>4/</sup> and an order for Respondent to recognize it as the exclusive representative of said unit of employees.

While Respondent does not dispute most of the material facts, it does deny that it had prior knowledge of the organizational campaign or that it had unlawful motivation. It affirmatively asserts that the instant discharges were for disciplinary (inefficiency, misconduct) and layoff purposes.

DISCUSSION

Knowledge

Undisputed testimony establishes that supervisory employees Jones and Keats attended the December 17 organizational meeting at Stackpole's residence (also attended by Voith), and freely participated in employees' discussion of organizational matters until after the December 22, 1975, meeting. Stackpole personally invited each of the two supervisors to the December 22, 1975, meeting at his apartment. Jones actually attended and remained through most of the meeting at which, he, saw the employees present, personally met Complainant's representatives, learned the precise labor organization involved, heard its then current dues structure and saw authorization cards at least distributed. Therefore, Jones knew the labor organization involved, its current dues, Voith's view and Stackpole's role. Keats and all other employees knew much of, and could hardly

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<sup>3/</sup> The provisions involved are Section 111.04, 111.06 (1) (a), (c) and (d). The stipulated unit is all regular full-time and all regular part-time employees of the Employer, excluding supervisory, confidential, craft and managerial employees, and those employed in the Repair Department (Transcript page 3). See Section 111.02 (6). In view of the results herein, it is not necessary to determine the appropriateness of the parties exclusion of the repairman.

<sup>4/</sup> Interest denied.

have avoided learning the remainder of the foregoing. Even Roffers and Pillat, in the context of a small operation in which both work closely with their employes, certainly had an adequate opportunity to learn the foregoing by overhearing employe conversation.

While both Jones and Keats denied having told management anything about the organizational campaign prior to the discharges. Pillat in effect told Voith in their December 30, 1975, conversation, inter alia, that he had known about the organizational campaign prior to the first efforts to discharge Voith and Stackpole, having learned thereof from two people, one of whom was in "management."<sup>5/</sup> During the same conversation Pillat demonstrated his knowledge of which union was involved and its then current dues structure, at least part of which information must have come through employe sources or one of the two managers.<sup>6/</sup> While it appears Jones probably did report the above information to management, the examiner is satisfied by the clear and satisfactory preponderance of the evidence that either Jones or Keats told Pillat of the organizational activity and the above information prior to Respondent's attempts to discharge the two employes.

#### Motivation

The facts and circumstances confirm Respondent's unlawful motivation for the instant discharges. Respondent's attitude towards retaining the two employes changed noticeably at about the time of

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<sup>5/</sup> There are only three other management people, Jones, Keats and Roffers. The record does not establish that Roffers had any other available basis for knowledge other than from learning of all of the above information through employe sources, Keats or Jones.

<sup>6/</sup> While the conversation of December 30, 1975, Finding of Fact 17, sufficiently establishes that Respondent had surmised Voith's attitude favoring Complainant prior to its actions, this inference is also supported by other evidence. First, Voith is apparently a social friend of Stackpole's. He had been a social guest at his apartment on at least one occasion, (transcript p. 17). It was he to whom Stackpole first confided his idea concerning organization. (transcript p. 49) Secondly, Pillat and Roffers, who both work closely with their few employes knew of this relationship, (transcript pp. 73, 74, 75, 77). Keats and Jones had both seen Voith at the first meeting and Jones had seen him at the second. Also, in view of the open discussion in the small shops, any of the employes, managers or even stockholders could have directly heard, or heard of, Voith's views. (transcript p. 49, Voith's advocacy) While the above mentioned conversation possibly suggests some hesitancy concerning the strength of Voith's views at that time, the examiner is satisfied Respondent at least believed Voith's views of Complainant were the same as Stackpole's.

the discharges. Respondent took action to constructively discharge both at the first opportunity after the December 22, 1975, organizational campaign, and Voith, his personal friend. Its first use of rescheduling to substantially reduce pay for both and to assign hours and days of the week known by Respondent to be those which were most disagreeable to each employe, all for the obvious purpose of causing these employes to quit, itself suggests unusual motivation for the discharges. Further, Respondent's impatience in not waiting for said tactic to have effect suggests unusual urgency consistent with anti-union motivation and totally inconsistent with Respondent's pro-offered reasons for the discharges. Finally the contemporaneous consideration of common rationale for, and congruence of, action taken suggest a common primary motivation for both discharges which itself is inconsistent with much of Respondent's rationale for the discharges.

In addition to the aforementioned circumstances, the conversation of December 30, 1975 (Finding of Fact 17), provides substantial evidence of unlawful motivation. After Voith and Pillat had turned the discussion to other matters, Pillat again raised the subject of the organizational campaign with his assertions of "opinion" including his statement "You shouldn't let Management know about a thing like that." In this context, Pillat intentionally implied that these two discharges were motivated by the two employe's organizational activity. The examiner draws that inference by crediting the foregoing statement as Pillat's admission against interest.<sup>7/</sup> In the context of a fresh, and therefore still reversible discharge, the context surrounding the entire conversation and Respondent's immediate hiring of a replacement for Voith or Stackpole, the entire conversation suggests Pillat's implicit offer to withdraw the discharge should Voith change his views about Complainant. Thus, the conversation further suggests a continuing unlawful purpose.

By contrast many of Respondent's reasons for the discharges are clearly pretextual. Among them are stale individual tardiness related incidents, Voith's argument with Roffers, and Voith's purchase of equipment from a supplier. It did not show it had even contemporaneously objected to any of these incidents. In fact,

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<sup>7/</sup> Wis. Rev. Stat. (1975) 908.01 (4) (b).

Roffers actually knowingly participated in the purchase incident.<sup>8/</sup> Even if these were the grounds for the discharge, none would explain the sudden urgency thereof or the strong relationship of primary motivation for both discharges.

Respondent more seriously alleged that it had discharged each of the two for their poor selling performance. Admittedly each had a decrease in sales in 1975 from their 1974 performances. But Respondent's overall sales decreased dramatically in 1975 from 1974 for reasons Respondent did not attribute to individual employees. Respondent produced none of its preparation of statistical data suggesting that the decline of either employe was worse than the overall decline. Further, the circumstances suggest Respondent never believed the performance of either was worse than that of other employees: Voith had Respondent's highest sales in 1974. Even after the discharge Pillat continued to call Voith the best salesperson Respondent had ever had. At all relevant times Respondent had given Stackpole at least leadperson authority, authority which is customarily not given to employees an employer considers ineffective. In late October, 1975 Respondent reversed its previously announced intention to reduce Stackpole's salary when he threatened to quit, not an action of an employer anxious to discharge an employe. The foregoing, taken with the record as a whole establishes Respondent was not motivated by the alleged poor selling performance of either employe.

Respondent also alleged a non-disciplinary economic motivation, layoff. The instant discharges did occur after Respondent's 1975 Christmas rush, if any there was. Immediately prior to the discharges it employed ten employees, excluding the two managers, two stockholders and one full-time repairman.<sup>9/</sup> Of the foregoing the instant two and possibly more employees were then employed full-time. As of the date of hearing, Respondent had "reduced" non-supervisory sales personnel by two employees to eight of which two were full-time and six part-time.<sup>10/</sup> Other evidence suggests the "reduction"

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<sup>8/</sup> While Respondent argues that it discharged Voith for having paid for the purchased goods with an insufficient fund check, it either did not know about the check at the time of the discharge or did not think enough of it to list it as a reason in the particularized list of reasons specified in Voith's discharge letter.

<sup>9/</sup> Transcript pp. 3-4.

<sup>10/</sup> Transcript p. 3.

took place at a time somewhat after the instant discharges.<sup>11/</sup> While Respondent may have reduced its total staff sometime after the Christmas selling season,<sup>12/</sup> it hired another non-supervisory salesperson immediately after the instant discharges.<sup>13/</sup> The examiner is satisfied by a preponderance of the evidence that Respondent discriminatorily discharged Voith and Stackpole solely for the purpose of discouraging their, and all other employees' membership in, and activity on behalf of, Complainant, or, if there was a net reduction of one salesperson at that time, both were selected for layoff solely for the above purpose.<sup>14/</sup>

#### REMEDY

The remedy entered today is deemed appropriate to effectuate the purposes of the Wisconsin Employment Peace Act. Certain elements deserve further comment:

#### Reinstatement

In view of Respondent's motivation in selecting the instant employes for layoff, if indeed a reduction of selling staff occurred at the time, the examiner is satisfied that the policies of the Wisconsin Employment Peace Act are best served under the instant

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<sup>11/</sup> Transcript pp. 79, 80.

<sup>12/</sup> Depending on the number of positions which were full-time at the date of discharge, Respondent may merely have consolidated two part-time positions into two part-time positions with more hours.

<sup>13/</sup> Transcript p. 72. It is immaterial that whether the position is full or part-time.

<sup>14/</sup> Quercus Alba, Inc., (14726-C, D), 10/76; Ventre Packing Co., Inc., 163 N.L.R.B. No. 47, 64 L.R.R.M., 1414, (1967).

facts by ordering their immediate reinstatement. Any layoffs which might then be necessitated must be made on a non-disciplinary basis.<sup>15/</sup>

Recognition

At no time during the organizational campaign did Respondent ever receive the authorization of a majority of employees in a unit appropriate under the Wisconsin Employment Peace Act. In any event, even though Respondent's actions dissipated Complainant's support, the instant remedy is sufficient to re-establish a significant proportion of that support and to shortly make the holding of a fair election practical.

Dated at Milwaukee, Wisconsin, this 14th day of December, 1976

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II  
Stanley H. Michelstetter II  
Examiner

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<sup>15/</sup> See note 14, above.